

ASSEMBLY BILL

No. 798

Introduced by Assembly Member Wagner

February 21, 2013

An act to amend Section 6006.5, and to repeal Section 6019, of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 798, as introduced, Wagner. Sales and use taxes: occasional barterer.

Existing sales and use tax laws impose a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. This law considers a person making more than 2 retail sales of tangible personal property during any 12-month period to be a retailer, as specified.

Existing law also exempts from tax, the gross receipts from occasional sales of tangible personal property other than vehicles, vessels, or aircraft.

This bill would repeal the provision considering a person making more than 2 retail sales in a 12-month period a retailer and would include in the definition of an occasional sale, the sale of tangible personal property the gross receipts of which are \$2000 or less, and would further include in that definition, 12 or fewer sales of tangible personal property in a 12-month period the gross receipts of which are more than \$2000, provided that the consideration for those sales is other than money.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts to impose transactions and use taxes in accordance with the Transactions and Use Tax Law which conforms to the Sales and Use Tax Law. Amendments to state sales and use taxes are incorporated into these laws. Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6006.5 of the Revenue and Taxation
- 2 Code is amended to read:
- 3 6006.5. "Occasional sale" includes all of the following:
- 4 (a) A sale of *tangible personal* property not held or used by a
- 5 seller in the course of activities for which he or she is required to
- 6 hold a seller's permit or permits or would be required to hold a
- 7 seller's permit or permits if the activities were conducted in this
- 8 state, provided that the sale *satisfies any of the following*:~~is~~
- 9 (1) *The sale* not one of a series of sales sufficient in number,
- 10 scope, and character to constitute an activity for which he or she
- 11 is required to hold a seller's permit or would be required to hold
- 12 a seller's permit if the activity were conducted in this state.
- 13 (2) *The gross receipts from the sale of tangible personal*
- 14 *property are two thousand dollars (\$2000.00) or less and the*
- 15 *consideration for the sale is other than money.*
- 16 (3) *The seller makes no more than 12 sales of tangible personal*
- 17 *property the gross receipts from which exceed two thousand dollars*
- 18 *(\$2000.00) during any 12-month period, and the consideration*
- 19 *for the sale is other than money.*
- 20 (b) Any transfer of all or substantially all the property held or
- 21 used by a person in the course of those activities when after the

1 transfer the real or ultimate ownership of the property is
2 substantially similar to that which existed before the transfer. For
3 the purposes of this section, stockholders, bondholders, partners,
4 or other persons holding an ownership interest in a corporation or
5 other entity are regarded as having the “real or ultimate ownership”
6 of the property of the corporation or other entity.

7 (c) A sale of property, other than hay, by a producer of hay,
8 provided that the sale is not one of a series of sales sufficient in
9 number, scope, or character to constitute an activity for which the
10 producer would be required to hold a seller’s permit if the producer
11 were not also selling hay.

12 SEC. 2. Section 6019 of the Revenue and Taxation Code is
13 repealed.

14 ~~6019. Every individual, firm, copartnership, joint venture, trust,~~
15 ~~business trust, syndicate, association or corporation making more~~
16 ~~than two retail sales of tangible personal property during any~~
17 ~~12-month period, including sales made in the capacity of assignee~~
18 ~~for the benefit of creditors, or receiver or trustee in bankruptcy,~~
19 ~~shall be considered a retailer within the provisions of this part in~~
20 ~~his or its individual, firm, copartnership, joint venture, trust,~~
21 ~~business trust, syndicate, associate or corporate capacity.~~

22 SEC. 3. Notwithstanding Section 2230 of the Revenue and
23 Taxation Code, no appropriation is made by this act and the state
24 shall not reimburse any local agency for any sales and use tax
25 revenues lost by it under this act.

26 SEC. 4. This act provides for a tax levy within the meaning of
27 Article IV of the Constitution and shall go into immediate effect.